

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUAN ROMERO, FRANK TISCARENO,
and KENNETH ELLIOTT on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

SECURUS TECHNOLOGIES, INC.,

Defendant.

Case No.: 16cv1283 JM (MDD)

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Plaintiffs Juan Romero, Kenneth Elliott, and Frank Tiscareno (“Plaintiffs”), on behalf of themselves and the class they represent, move for preliminary approval of a proposed class action settlement reached with Defendant Securus Technologies, Inc. (“Securus”). (Doc. No. 175.) Securus does not oppose. (Doc. 175-2 ¶ 22.) A hearing on the motion was held on June 6, 2020. For the reasons set forth below, the motion is **GRANTED**.

I. BACKGROUND

On May 27, 2016, Plaintiffs filed a putative class action alleging that Securus unlawfully recorded calls between detainees and attorneys. Securus provides inmate communication services for correctional facilities throughout California. Plaintiffs are two

1 former inmates and a criminal defense attorney who used Securus' telephone systems to
2 make calls to and from certain correctional facilities in California and whose calls were
3 recorded. After the court partially granted two successive motions to dismiss, Plaintiffs
4 filed the operative Third Amended Complaint, which alleges claims for violation of the
5 California Invasion of Privacy Act (CIPA), unfair competition, violation of the California
6 Business and Professions Code § 17200 *et seq.*, concealment, fraud, negligence, and unjust
7 enrichment. (Doc. No. 30.)

8 On October 10, 2017, Plaintiffs first moved for class certification, seeking to
9 represent the class under both Rule 23(b)(2) and 23(b)(3). (Doc. No. 62.) Plaintiffs argued
10 there were at least 123 potential class members in San Diego, and more statewide. (Doc.
11 No. 62-1 at 8-10.) Plaintiffs argued that the commonality and typicality requirements were
12 met by a common contention that Securus recorded phone conversations between detainees
13 and attorneys without permission. (*Id.* at 11.) Plaintiffs supported their adequacy argument
14 with declarations from Plaintiffs and their counsel attesting to Plaintiffs' commitment to
15 the class and counsels' experience in prosecuting complex litigation cases and unlawful
16 recording class actions. (*Id.* at 14-16.)

17 On April 12, 2018, the court denied Plaintiffs' motion for class certification without
18 prejudice, explaining that Plaintiffs had "fail[ed] to present sufficient evidence . . . that
19 there is an administratively feasible manner to determine whether a class action is the
20 superior method for prosecuting Plaintiffs' claims." (Doc. No. 93 at 5.) The court found
21 the class could be as small as 22 members or as large as thousands, and numbers at the low
22 end might not produce efficiencies from class litigation. *Id.* at 5-6. The court allowed
23 Plaintiffs to renew their motion within 90 days notwithstanding Securus' position that it
24 had completed its production and that the deadline for discovery on class certification
25 issues had passed. *Id.* at 6.

26 On May 22, 2018, Plaintiffs moved for summary judgment on the issue of whether
27 their CIPA claim required proof of intent. (Doc. No. 101.) On July 11, 2018, Plaintiffs
28 also filed a renewed motion for class certification. (Doc. No. 122-1.) On November 21,

1 2018, the court issued an order resolving both motions. (Doc. No. 141.) The court denied
2 Plaintiffs' motion for partial summary judgment because it found that CIPA is not a strict
3 liability statute, and because Plaintiffs failed to establish there is no genuine dispute of
4 material fact as to whether Securus had the necessary intent. *Id.* at 19. However, the court
5 granted in part Plaintiffs' renewed motion for class certification. *Id.* at 33-34. The court
6 certified a class for Plaintiffs' CIPA claim under Rule 23(b)(2) and Rule 23(b)(3), but
7 denied class certification for each of Plaintiffs' other claims. *Id.* The court certified the
8 following class:

9 Every person who was a party to any portion of a conversation between a
10 person who was in the physical custody of a law enforcement officer or other
11 public officer in California, and that person's attorney, on a telephone number
12 designated or requested not to be recorded, any portion of which was
13 eavesdropped on or recorded by Defendant Securus Technologies, Inc. by
14 means of an electronic device during the period from July, 10, 2008 to the
15 applicable opt-out date, inclusive[.]

16 (*Id.* at 34.) The court also appointed as class counsel the Law Office of Robert L. Teel, the
17 Law Offices of Ronald A. Marron, and Foley & Lardner. *Id.*

18 Thereafter, the parties participated in two day-long mediation sessions with the
19 Honorable Leo S. Papas (Retired), first on October 3, 2018 and again on August 16, 2019.
20 While the mediations did not result in an immediate settlement, the parties reportedly made
21 significant progress and continued to engage in direct settlement negotiations following the
22 conclusion of the second mediation.

23 On December 3, 2018, Plaintiffs filed an interlocutory request with the Ninth Circuit
24 to appeal the denial of their motion for partial summary judgment, which was denied. (Doc.
25 Nos. 143, 149.) Additionally, Plaintiffs and Securus petitioned the Ninth Circuit for review
26 of the district court's class certification order. (Doc. Nos. 144, 145.) Plaintiffs sought
27 review of the district court's denial of class certification as to all claims except their CIPA
28 claim, arguing that they were based on the same central question and common proof. (Doc.
No. 144.) Securus sought review of three questions: (1) whether the court could certify

1 class claims without any evidence that Securus had a common, class-wide intention about
 2 recording; (2) whether class litigation was superior to other forms of litigation in this case;
 3 and (3) whether the court had the authority to grant Plaintiffs' motion for class certification
 4 after having denied Plaintiffs' first motion for class certification. (Doc. No. 145.) Securus
 5 also argued that the district court erred because the court misapplied the law governing
 6 allegations of improperly recorded calls after 2014. *Id.* On February 27, 2019, the Ninth
 7 Circuit denied Plaintiffs' petition, but granted Securus' petition. (Doc. Nos. 155, 156.) On
 8 April 17, 2019, the action was stayed in the district court pending Securus' appeal. (Doc.
 9 No. 168.)

10 Following the Ninth Circuit's grant of review of Securus' petition, the Ninth Circuit
 11 appointed a mediator. After multiple status conferences with the mediator, an agreement
 12 was reached. On March 12, 2020, the Ninth Circuit dismissed the appeal without prejudice
 13 to reinstatement for approval of the settlement by the district court. On May 18, 2020,
 14 Plaintiffs filed the instant motion for preliminary approval of the class action settlement.

15 II. SETTLEMENT AGREEMENT TERMS

16 The terms of the proposed settlement include only injunctive relief, and no monetary
 17 relief, to the class members. (Doc. No. 175-3). Under the proposed settlement agreement,
 18 within six months of the date the court enters judgment granting final approval of the
 19 settlement, Securus will: (1) make available to its current and future California facility
 20 customers a "private call" option when dialing approved numbers that will allow inmates
 21 to make free calls that "will not be recorded;" (2) make available to its current and future
 22 California customers message prompts advising them, *inter alia*, that calls to non-approved
 23 numbers may be monitored and recorded, but calls to approved numbers will not; and
 24 (3) post on its website information on how to designate a telephone number as an approved
 25 number. For five years thereafter, Securus will provide Plaintiffs' counsel with bi-annual
 26 declarations describing Securus' compliance. Additionally, subject to the court's approval,
 27 Securus will pay each Plaintiff a service award of \$20,000, and attorneys' fees and costs in
 28 the amount of \$840,000. Only the named Plaintiffs, not class members, will release their

claims for injunctive relief and for damages. Finally, upon issuance of the preliminary approval order, Securus will engage a third-party administrator, ILYM Group, to provide notice to class members by email, or in the event of an invalid email address, by mail.

As a result of their settlement, the parties request that the court amend its November 21, 2018 class certification order so that it includes only injunctive relief under Rule 23(b)(2). *See* Fed. R. Civ. P. 23(c)(1)(C) (“An order that grants or denies class certification may be altered or amended before final judgment.”); *see also In re MDC Holdings Sec. Litig.*, 754 F. Supp. 785, 801 (S.D. Cal. 1990) (“Throughout the trial, the district court retains the authority to amend the certification order as may be appropriate as the case develops.”). Accordingly, Plaintiffs seek to modify the November 21, 2018 class definition to the following:

Every person who was a party to any portion of a conversation between a person who was in the physical custody of a law enforcement officer or other public officer in California, and that person’s attorney, on a telephone number designated or requested not to be recorded, any portion of which was eavesdropped on or recorded by Defendant Securus Technologies, Inc. by means of an electronic device during the period July 10, 2008 through whichever occurs first: (1) the date on which the court grants preliminary approval of the settlement; or (2) June 16, 2020.

(Doc. No. 171-1 at 12.)¹

III. PRELIMINARY CERTIFICATION OF RULE 23 CLASS

Before approving the settlement, the court’s “threshold task is to ascertain whether the proposed settlement class satisfies the requirements of Rule 23(a) of the Federal Rules of Civil Procedure applicable to class actions, namely: (1) numerosity, (2) commonality,

¹ Although the court has already appointed class counsel, Plaintiffs also request that the court “reconfirm” the appointment of the Law Office of Robert L. Teel, the Law Offices of Ronald A. Marron, and Foley & Lardner as class counsel for the settlement. (Doc. No. 175-1 at 20-21.) Plaintiffs support this request by noting that they have devoted and will continue to devote a significant amount of time and effort to this litigation, and that they have extensive experience in complex litigation and class actions. (*Id.*)

(3) typicality, and (4) adequacy of representation.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). In the settlement context, the court “must pay undiluted, even heightened, attention to class certification requirements.” *Id.* In addition, the court must determine whether class counsel is adequate (Fed. R. Civ. P. 23(g)), and whether “the action is maintainable under Rule 23(b)(1), (2), or (3).” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000) (quoting *Amchem Prod. v. Windsor*, 521 U.S. 591, 614 (1997)).

A. Numerosity

This requirement is satisfied if the class is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “A class greater than forty members often satisfies this requirement[.]” *Walker v. Hewlett-Packard Co.*, 295 F.R.D. 472, 482 (S.D. Cal. 2013) (citing *Californians for Disability Rights, Inc. v. Cal. Dep’t of Transp.*, 249 F.R.D. 334, 346 (N.D. Cal. 2008)). Here, the court previously found that joinder of the 246 potential class members identified by Plaintiffs would be impracticable. (Doc. No. 141 at 30-31.) Additionally, given that the relief sought now only includes injunctive relief, the numerosity requirement may be relaxed. *See Reynoso v. RBC Bearings, Inc.*, Case No. SACV 16-01037 JVS(JCGx), 2017 WL 6888305, at *5 (C.D. Cal. Oct. 5, 2017), *decertified on other grounds by Reynoso v. All Power Mfg. Co.*, No. SACV 16-01037 JVS(JCGx), 2018 WL 5906645, at *6 (C.D. Cal. Apr. 30, 2018). Accordingly, this requirement has been met.

B. Commonality

This requirement is satisfied if “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “To satisfy this commonality requirement, plaintiffs need only point to a single issue common to the class.” *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 114, 1121 (E.D. Cal. 2009). Here, as the court previously found, the requirement is satisfied because the class claim involves a single common question and that common issues dominate this litigation. (Doc. No. 141 at 31.) The court identified the following two class-wide questions that could be answered by common proof: (1)

1 “[w]hether Securus recorded calls between detainees and attorneys without their
 2 permission,” and (2) “[h]ow and why Securus recorded detainee-attorney calls.” (*Id.* at
 3 24.)

4 **C. Typicality**

5 The typicality requirement is satisfied if “the claims or defenses of the representative
 6 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “The
 7 test of typicality is whether other members have the same or similar injury, whether the
 8 action is based on conduct which is not unique to the named plaintiffs, and whether other
 9 class members have been injured by the same course of conduct.” *Hanon v. Dataproducts*
 10 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation and citation omitted). Here,
 11 the court previously found that “[l]ike all class members, Plaintiffs’ confidential calls were
 12 recorded by Securus without their permission.” (Doc. No. 141 at 31). Thus, the injunctive
 13 relief achieved by the settlement would apply to Plaintiffs and other members of the class
 14 equally. For the purposes of preliminary approval of settlement, therefore, Plaintiffs have
 15 made an adequate showing of typicality.

16 **D. Adequacy**

17 The final Rule 23(a) requirement is that “the representative parties will fairly and
 18 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requires the
 19 court to address two questions: “(a) do the named plaintiffs and their counsel have any
 20 conflicts of interest with other class members and (b) will the named plaintiffs and their
 21 counsel prosecute the action vigorously on behalf of the class.” *In re Mego*, 213 F.3d at
 22 462. A court certifying a class must consider: “(i) the work counsel has done in identifying
 23 or investigating potential claims in the action; (ii) counsel’s experience in handling class
 24 actions; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel
 25 will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A). The court may also
 26 consider “any other matter pertinent to counsel’s ability to fairly and adequately represent
 27 the interests of the class.” *Id.* at 23(g)(1)(B).
 28

1 Here, the court already determined that Plaintiffs and class counsel will fairly and
 2 adequately protect the class members' interests. (Doc. No. 141 at 32-33.) Plaintiffs assert
 3 that "nothing has changed in that regard," and "[s]ince the Court's order granting class
 4 certification, Class Counsel have continued to vigorously litigate this action before this
 5 Court and the Ninth Circuit and have engaged in extensive settlement negotiations, further
 6 evidencing that Rule 23(a)'s adequacy requirements remain satisfied." (Doc. 175-1 at 18.)
 7 Because there is no obvious conflict between the named Plaintiffs' interests and those of
 8 the class members, and because Plaintiffs' counsel appears to have extensive experience in
 9 litigating wage and hour class action lawsuits, this element is satisfied for the purposes of
 10 preliminary approval.

11 **E. Rule 23(b)(2)**

12 "In addition to meeting the conditions imposed by Rule 23(a), the parties seeking
 13 class certification must show that the action is maintainable under Fed. R. Civ. P 23(b)(1),
 14 (2) or (3)." *Hanlon*, 150 F.3d at 1022. Rule 23(b)(2) provides that a class action may be
 15 maintained if "the party opposing the class has acted or refused to act on grounds that apply
 16 generally to the class, so that final injunctive relief or corresponding declaratory relief is
 17 appropriate respecting the class as a whole[.]" Here, the court previously determined that
 18 a single injunction or declaratory judgment would provide relief to each member of the
 19 class. (Doc. No. 141 at 30 (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360
 20 (2011)). Additionally, the court previously found that "[a]n injunction prohibiting Securus
 21 from eavesdropping on, listening to, recording, disclosing, or using communications
 22 between detainees and their attorneys without their permission would prevent an issue
 23 similar to the one presented here from recurring," and that such a ruling "would benefit all
 24 members of the class." (*Id.* at 29.) In accordance with the above, for purposes of
 25 preliminary approval, Plaintiffs have satisfied the requirements for certification of a class
 26 under Rule 23.

IV. PRELIMINARY APPROVAL OF SETTLEMENT

“At the preliminary approval stage, the Court may grant preliminary approval of a settlement if the settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval.” *Sciortino v. PepsiCo, Inc.*, Case No. 14-cv-00478-EMC, 2016 WL 3519179, at *4 (N.D. Cal. June 38, 2016) (quoting *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011)). “At the preliminary approval stage, a full fairness analysis is unnecessary.” *Zepeda v. Paypal, Inc.*, No. C 10-1668 SBA, 2014 WL 718509, at *4 (N.D. Cal. Feb. 24, 2014) (internal quotation marks and citation omitted). “Closer scrutiny is reserved for the final approval hearing.” *Sicortino*, 2016 WL 3519179, at *4.

Rule 23(e) provides that “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” “Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025. The Rule also “requires the district court to determine whether a proposed settlement is fundamentally fair, adequate and reasonable.” *Id.* at 1026. In making this determination, the court is required to “evaluate the fairness of a settlement as a whole, rather than assessing its individual components.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 818-19 (9th Cir. 2012). Because a “settlement is the offspring of compromise, the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.” *Hanlon*, 150 F.3d at 1027. Thus, in assessing a settlement proposal, the district court is required to balance a number of factors, namely:

the strength of the plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of governmental participant; and the reaction of the class members to the proposed settlement.

1 *Id.* at 1026. The court’s primary concern “is the protection of those class members,
 2 including the named [p]laintiffs, whose rights may not have been given due regard by the
 3 negotiating parties.” *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of San*
 4 *Francisco*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted). “In most situations, unless
 5 the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy
 6 and expensive litigation with uncertain results.” *Nat’l Rural Telecomms. Coop. v.*
 7 *DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). “Naturally, the agreement reached
 8 normally embodies a compromise; in exchange for the saving of cost and elimination of
 9 risk, the parties each give up something they might have won had they proceeded with
 10 litigation.” *U.S. v. Armour & Co.*, 402 U.S. 673, 681 (1971). Furthermore, there is a strong
 11 judicial policy in favor of settlement, but the settlement may not be the product of collusion
 12 among the negotiating parties. *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th
 13 Cir. 2004). A full fairness analysis is unnecessary at the preliminary approval stage
 14 because some of these factors may not be able to be fully assessed until the court conducts
 15 a final fairness hearing. *See Dalton v. Lee Publ’ns, Inc.*, No. 08-CV-1072-GPC-NLS, 2015
 16 WL 11582842, at *6 (S.D. Cal. Mar. 6, 2015). “At this preliminary approval stage, the
 17 court again need only ‘determine whether the proposed settlement is within the range of
 18 possible approval’” and thus, whether the notice to the class and the scheduling of a fairness
 19 hearing is appropriate. *Alberto v. GMR, Inc.*, 252 F.R.D. 652, 666-67 (E.D. Cal. 2008)
 20 (citation omitted).

21 Plaintiffs argue that the proposed settlement represents a fair, adequate, and
 22 reasonable result for class members because the class members: (1) will receive notice of
 23 the litigation and the changes in Securus’ privacy practices; (2) will be given an opportunity
 24 to object; and (3) are not bound to release any rights they may have to seek and obtain
 25 monetary damages or other relief. (Doc. No. 175 at 22.) Plaintiffs further argue that the
 26 proposed settlement satisfies the standard for preliminary approval because it: (1) falls
 27 within the range of possible approval; (2) is the product of serious, informed, and non-
 28 collusive negotiations; (3) has no obvious deficiencies; and (4) does not improperly grant

1 preferential treatment to class representatives or segments of the class. (*Id.* at 22-23 (citing
 2 *Lopez v. Mgmt. & Training Corp.*, Case No.: 17cv1624 JM(RBM), 2019 WL 6829250, at
 3 *5 (S.D. Cal. Dec. 13, 2019)).

4 **A. Range of Possible Approval**

5 To determine whether a proposed settlement is within the range of possible approval,
 6 “courts primarily consider plaintiffs’ expected recovery balanced against the value of the
 7 settlement offer.” *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D.
 8 Cal. 2007). This requires the court to evaluate the strength of a plaintiff’s case. *Id.* Here,
 9 Plaintiffs assert that the injunctive relief in the proposed settlement is designed to eliminate
 10 virtually all risk of inadvertent recording of attorney-detainee phone calls. (Doc. No. 171-
 11 1 at 23.) Plaintiffs argue, and the court agrees, that the outcome of litigation is uncertain
 12 because Securus continues to deny any wrongdoing and there is the distinct possibility that
 13 the Ninth Circuit could reverse the district court’s order granting class certification.
 14 Additionally, because the district court rejected Plaintiffs’ theory of strict liability on
 15 summary judgment, and because the Ninth Circuit declined to review that issue, Plaintiffs
 16 may be required to prove scienter at trial, which will be challenging because Securus
 17 maintains that the call recordings resulted from a software glitch.

18 **B. Arm’s Length Negotiations**

19 In *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009), the Ninth Circuit
 20 stated, “[w]e put a good deal of stock in the product of an arms-length, non-collusive,
 21 negotiated resolution.” Plaintiffs argue, and the court agrees, that the proposed settlement
 22 is the result of an arm’s length negotiation because: (1) it was preceded by four years of
 23 litigation involving extensive discovery and substantive motions; (2) at the time of
 24 settlement, Plaintiffs and class counsel had a full understanding that injunctive relief would
 25 adequately benefit the class when weighed against the risks of continuing litigation; (3) the
 26 parties participated in two in-person mediation sessions with an experienced mediator, and
 27 several months of continued settlement negotiations supervised by the Ninth Circuit
 28

mediator; and (4) class counsel have extensive experience in complex litigation and class actions. (Doc. No. 171-1 at 26-27.)

C. Deficiencies

In *Tableware*, 484 F. Supp. 2d. at 1080, the district court found that a settlement is likely free from obvious deficiencies when it provides a real, immediate benefit to the class despite numerous risks. Plaintiffs argue, and the court agrees, that the injunctive relief afforded is significant in light of the serious risks Plaintiffs face obtaining relief for the class at trial, and the risk that the Ninth Circuit would reverse class certification. (Doc. No. 175-1 at 27.)

D. Preferential Treatment

“[T]he Ninth Circuit has recognized that service awards to named plaintiffs in a class action are permissible and do not render a settlement unfair or unreasonable.” *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *9 (N.D. Cal. Apr. 29, 2011) (citing *Stanton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003)). Plaintiffs therefore argue that the proposed settlement agreement does not give preferential treatment to any member, even though it authorizes the named Plaintiffs to seek an amount up to \$20,000 as a service award. (Doc. No. 17-1 at 28.) As the court made clear to the parties during the hearing on the instant motion, the appropriateness of a service award, and the amount of any service award, will ultimately be decided by the court after the final approval hearing.

E. Notice

Class members are entitled to receive the best notice practicable about the settlement. Fed. R. Civ. P. 23(c)(2). Notice should be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). “[T]he mechanics of the notice process are left to the discretion of the court subject only to the broad ‘reasonableness’ standards imposed by due

process.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975). In support of the sufficiency of their proposed notice, Plaintiffs state:

[T]he settlement administrator will be provided with the most current list of names, email addresses, and physical addresses of Class Members based on Defendant’s records. The settlement administrator will then email (and if necessary, mail) the Notice to all known Class Members. The Notice directs Class Members to the Settlement website, where they can find Settlement-related documents, including the Settlement Agreement, the Notice, and other pertinent information.

(Doc. No. 171-1 at 25.)

The proposed class notice appears plain and easily understood because the notice describes the claims, the class members, the relief provided under the settlement, and class members’ rights and option to appear at the final approval hearing personally or through counsel. (Doc. 175-3 at 21-22.) Additionally, class members will have an opportunity to object to the settlement because under a Rule 23(b)(2) class action involving injunctive relief, there is no opportunity to opt out, and the class members here are not bound by the release.

V. CONCLUSION AND ORDER

Based on the April 17, 2020 settlement agreement, the unopposed motion for preliminary approval of the settlement, supporting documents, and a hearing with the parties, the court concludes upon preliminary examination, that: (1) the proposed class satisfies the requirements of Rule 23(a) and Rule 23(b)(2); (2) the settlement appears fair, reasonable, and adequate, and within the range of reasonableness for preliminary approval such that a presumption of fairness is appropriate; (3) the class should receive notice of the settlement and be provided the opportunity to object to it; and (4) whether the settlement is fair, reasonable, and adequate and should be finally approved and confirmed through final judgment, and whether the court should grant class counsel’s request for payment of attorneys’ fees, as well as the service award for the class representatives, should be considered at, and is reserved for, a final approval hearing.

1 The court therefore preliminarily finds that the settlement of the action, on the terms
2 and conditions set forth in the agreement and the exhibits thereto, are fundamentally fair,
3 reasonable, adequate and in the best interests of the class members, taking into
4 consideration the benefits to class members; the strength and weaknesses of Plaintiffs’
5 case; the complexity, expense and probable duration of further litigation; and the risk and
6 delay inherent in possible appeals, subject to the following revisions:

- 7
8 1. The first full sentence of Article III, “SETTLEMENT TERMS,” Section E, Subpart
9 4, “Compliance Reporting,” on page 6 of 17 of the Settlement Agreement shall be
10 amended and restated to read, “Within twelve (12) months of the Effective Date, and
11 within each six-month period thereafter during the Term of this Settlement
12 Agreement, Securus will serve on Class Counsel a declaration executed under
13 penalty of perjury describing Securus’ compliance with the requirements of this
14 Agreement.”
15
- 16 2. The second full sentence of Article III, “SETTLEMENT TERMS,” Section G,
17 “Service Awards,” on page 7 of 17 of the Settlement Agreement shall be amended
18 and restated to read, “After preliminary approval of the Agreement, the Class
19 Representatives may file a petition for Service Awards in an amount up to \$20,000
20 each.”
21
- 22 3. The last sentence of Article IV, “RELEASE OF CLAIMS,” Section A on page 7 of
23 17 of the Settlement Agreement shall be amended and restated to read, “Plaintiffs
24 shall release any further rights to file an Application for Attorneys’ Fees and Costs
25 and for a Service Award following entry of the Court’s order in connection therewith
26 and the Court’s Final Approval Order.”
27
28

4. Article VIII, “MISCELLANEOUS PROVISIONS,” Section V, “Continuing Jurisdiction,” on page 15 of 17 of the Settlement Agreement shall be amended and restated in its entirety to read “Continuing Jurisdiction. The Court may have continuing jurisdiction to implement this Agreement’s terms and the Final Judgment. The Parties submit to the jurisdiction of the Court for purposes of implementing the terms of the Settlement Agreement.”

Notice of the settlement should be given to persons in the class and a full hearing should be held for final approval of the settlement. The provisions of the settlement agreement as modified herein are preliminarily approved and the parties shall comply with each of its terms. The court also hereby finds and orders the following:

1. Jurisdiction

Based on the information provided by the parties to date, the court appears to have jurisdiction over the subject matter of this action and over each of the parties hereto, including under 28 U.S.C. § 1332, and venue appears proper in this district.

2. Settlement Administrator

The court approves the selection of ILYM, Inc. to be the settlement administrator. The settlement administrator will administer the applicable provisions of the agreement in accordance with the terms of the agreement, including, but not limited to: (1) distributing and providing the class notice; (2) receiving and examining objections; and (3) preparing, administering, and issuing all payments and disbursements required under the settlement agreement.²

3. Class Action Fairness Act

In compliance with the Class Action Fairness Act, 28 U.S.C. § 1715, and as set forth in the agreement, Defendant itself, or through its designee, is ordered to serve written notice

² As stated in the settlement agreement, the Defendant shall pay all costs and expenses in connection with giving notice as set forth herein.

1 of the proposed settlement on the U.S. Attorney General and the appropriate California
2 state official, unless such notice has already been served.

3 **4. Class Members**

4 Pursuant to Rule 23(b)(2), the certification of the action is confirmed for settlement
5 purposes as a class action on behalf of the following class members:

6 Every person who was a party to any portion of a conversation between a
7 person who was in the physical custody of a law enforcement officer or other
8 public officer in California, and that person's attorney, on a telephone number
9 designated or requested not to be recorded, any portion of which was
10 eavesdropped on or recorded by Defendant Securus Technologies, Inc. by
11 means of an electronic device during the period July 10, 2008 through June
12 16, 2020.

12 Excluded from the class are the judges to whom the action is or has been assigned and any
13 member of the judges' staffs and immediate families.

14 **5. Class Representatives and Class Counsel Appointments**

15 For purposes of the court considering preliminary approval, the court confirms its
16 appointment of Plaintiffs as the class representatives and Foley & Lardner LLP, the Law
17 Offices of Ronald A. Marron, and the Law Office of Robert L. Teel as class counsel.

18 **6. Distribution of Notice**

19 The court approves the form, content and method of notice set forth in the agreement.
20 Defendant shall provide the class list and email addresses to the settlement administrator
21 within five (5) days of this order granting preliminary approval.

22 The furnishing of information by Defendant to the settlement administrator for
23 purposes of giving notice to settlement class members or otherwise to administer the
24 settlement is pursuant to this court's order, as relevant to any law regarding consumer
25 reports.

26 No later than ten (10) days after the date of this order, the settlement administrator
27 shall establish the settlement and notice website. No later than fifteen (15) days after the
28 date of this order, the settlement administrator shall send by email the class notice and a

1 link to the settlement website to each person on the class list at their last known email
2 address as provided by Defendant or as updated by the settlement administrator. The email
3 will include a link to the settlement website to be maintained by the settlement
4 administrator. In the event of an invalid email address, the settlement administrator will
5 mail hardcopies of the notice to the address in Securus' database or as updated by the
6 settlement administrator through the national change of address database or otherwise. The
7 settlement administrator shall use such methods as it determines are practicable (which
8 may include a reverse-directory lookup and/or skip tracing) to attempt to match email
9 addresses or mail addresses and contact information to names and addresses.

10 As to class members whose names and addresses are not located through such
11 methods, the settlement administrator shall provide notice by the settlement website. The
12 settlement website shall contain the full details of the settlement. If the attempts at notice
13 for any class member are unsuccessful, the settlement website shall constitute notice and
14 the class member shall be deemed a member of the settlement class whose rights and claims
15 with respect to the issues raised in this action will be determined by the court's final order
16 approving the settlement of the class claim and this action, the judgment, and by the other
17 rulings in the action. With their motion for final settlement approval, class counsel shall
18 file a declaration from the settlement administrator detailing its compliance with the notice
19 procedures set forth in the agreement.

20 The form, content, and method of notice set forth in the agreement and approved
21 herein provide a means of notice reasonably calculated to apprise the class members of the
22 pendency of the action and the proposed settlement, and thereby meet and satisfy the
23 requirements of Rule 23(c)(2), as well as due process under the United States Constitution,
24 and any other applicable law, and shall constitute due and sufficient notice to all settlement
25 class members entitled thereto.

26 **7. Settlement Process**

27 The court preliminarily approves the settlement for injunctive relief only as fair,
28 reasonable, and adequate for members of the class. The Defendant shall institute the

1 changes to its business practices within the time frame set forth in the agreement. The
2 court preliminarily approves the process set forth in the agreement for the change in
3 Defendant's business practices.

4 **8. Class Certification**

5 The court confirms that the action satisfies the applicable prerequisites for class
6 action treatment under Rule 23 and preliminarily confirms its certification of the class and
7 approves the class for settlement under Rule 23(b)(2).

8 **9. Objections by Class Members**

9 Any class member may object to the settlement, including without limitation, the
10 injunctive relief to be undertaken by Defendant under the settlement, class counsels'
11 application for attorneys' fees and litigation expenses, and the class representatives' service
12 payments, by mailing a written objection to the settlement administrator asking the court
13 to deny approval containing the class member's name, address, and telephone number, and
14 a statement that he or she objects to the approval of the settlement.

15 The last day for class members to submit written objections shall be seventy-five
16 (75) days after the date of this order granting preliminary approval of the settlement. Any
17 such objections must be made in accordance with the terms set forth in the class notice and
18 will be timely only if postmarked no later than seventy-five (75) days after the date of this
19 order granting preliminary approval of this settlement and agreement.

20 Any class member who wants to appear at the final approval hearing, either
21 personally or through counsel, must so state in his or her objection. The timeliness of
22 objections and notices shall be conclusively determined by the postmark date. Class
23 counsel shall file with the court any objections received with the final approval motion
24 papers. No later than seven (7) days before the final approval hearing, the parties may file
25 with the court replies to any objections.

26 Class members appearing through their own attorney are responsible for paying that
27 attorney. All written objections and supporting papers filed with the court must clearly
28 identify the case name and number, be submitted to the court either by mailing them to the

1 Clerk of the Court for the United States District Court for the Southern District of
 2 California, or by filing them in person in the United States District Court for the Southern
 3 District of California, and be filed or postmarked on or before the objection deadline. Class
 4 members who do not file their objections in the manner set forth herein will be deemed to
 5 have waived all objections.

6 **10. Motion for Final Approval and Application for Attorney Fees**
 7 **and Costs and Service Awards.**

8 Class counsel shall file a motion for final approval of the settlement, approval of class
 9 representatives' service payments, and an application for attorneys' fees and costs no later than
 10 sixty (60) days after the date of this order granting preliminary approval of the settlement. The
 11 motion for final approval of settlement and motion for attorneys' fees shall be posted on the
 12 settlement website by the settlement administrator so that they may be reviewed and printed
 13 out by any member of the settlement class or any other person.

14 **11. Final Approval Hearing**

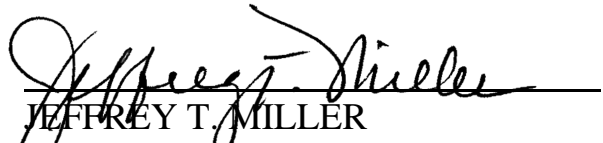
15 The court will conduct a final approval hearing on Monday, *September 28, 2020* in
 16 courtroom 5D of the United States District Court for the Southern District of California, 221
 17 West Broadway, San Diego, California 92101. The final approval hearing may be rescheduled
 18 or continued by the court without further notice to the settlement class members. At the final
 19 approval hearing, the court will consider: (1) whether this action satisfies the applicable
 20 prerequisites for class action treatment for settlement purposes under Rule 23; (2) whether the
 21 settlement is fundamentally fair, reasonable, adequate, and in the best interest of the class
 22 members and should be approved by the court; (3) whether the order granting final approval
 23 of class action settlement and final judgment, as provided under the agreement, should be
 24 entered issuing the injunction, releasing the released claims, and dismissing the action with
 25 prejudice; and (4) such other issues as the court deems appropriate. Attendance by the class
 26 members at the final approval hearing is not necessary. Settlement class members need not
 27 appear at the hearing or take any other action to indicate their approval of the proposed class
 28 action settlement.

1 **12. Other Proceedings and Continuing Jurisdiction**

2 Pending the final determination of the fairness, reasonableness, and adequacy of the
3 proposed settlement, no class representative shall prosecute, institute, commence, or continue
4 any lawsuit (individual action or class action) with respect to any claims released against the
5 Defendant. If the agreement is not finally approved for any reason, then this order shall be
6 vacated, the agreement shall have no force and effect, and the parties' rights and defenses shall
7 be restored, without prejudice, to their respective positions as if the agreement had never been
8 executed and this order never entered, subject to the court's discretion. The court retains
9 continuing and exclusive jurisdiction over the action to consider all further matters arising
10 out of or connected with the settlement, including the administration and implementation
11 of the agreement.

12 IT IS SO ORDERED.

13 DATED: June 16, 2020

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15 JEFFREY T. MILLER
16 United States District Judge
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